

# SENATE BILL No. 194

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 15-4-11-23; IC 24-5-20-13; IC 34-6-2; IC 34-57.

**Synopsis:** Uniform arbitration act. Replaces statutory arbitration provisions with the Uniform Arbitration Act prepared by the National Conference of Commissioners on Uniform State Laws in calendar year 2000. Repeals the current laws on arbitration and alternative dispute resolution.

**Effective:** July 1, 2003.

**Simpson**

January 9, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 194

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 15-4-11-23 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23. Arbitration under  
3 this chapter is not subject to ~~IC 34-57-2~~. **IC 34-57-5.**  
4 SECTION 2. IC 24-5-20-13, AS ADDED BY P.L.85-1999,  
5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2003]: Sec. 13. (a) The remedies afforded by this chapter are:  
7 (1) cumulative;  
8 (2) not exclusive; and  
9 (3) in addition to any other legal or equitable remedies available  
10 to the consumer.  
11 (b) In addition to any other remedies available, a consumer who  
12 suffers loss as a result of any violation of this chapter may:  
13 (1) bring an action to recover damages; or  
14 (2) submit the matter to arbitration under ~~IC 34-57-2~~. **IC 34-57-5.**  
15 SECTION 3. IC 34-6-2-10.5 IS ADDED TO THE INDIANA CODE  
16 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
17 1, 2003]: **Sec. 10.5. "Arbitration organization", for purposes of**



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1 **IC 34-57-5, has the meaning set forth in IC 34-57-5-1.**

2 SECTION 4. IC 34-6-2-10.7 IS ADDED TO THE INDIANA CODE  
3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2003]: **Sec. 10.7. "Arbitrator", for purposes of IC 34-57-5, has**  
5 **the meaning set forth in IC 34-57-5-1.**

6 SECTION 5. IC 34-6-2-31 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 31. (a) "Court", for  
8 purposes of IC 34-51-4, refers to the court awarding a judgment.

9 (b) "Court", for purposes of ~~IC 34-57-2~~, **IC 34-57-5**, has the  
10 meaning set forth in ~~IC 34-57-2-17~~. **IC 34-57-5-1.**

11 SECTION 6. IC 34-6-2-71.5 IS ADDED TO THE INDIANA CODE  
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
13 1, 2003]: **Sec. 71.5. "Knowledge", for purposes of IC 34-57-5, has**  
14 **the meaning set forth in IC 34-57-5-1.**

15 SECTION 7. IC 34-6-2-103, AS AMENDED BY P.L.2-2002,  
16 SECTION 89, AS AMENDED BY P.L.133-2002, SECTION 48, AND  
17 AS AMENDED BY P.L.153-2002, SECTION 1, IS AMENDED AND  
18 CORRECTED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
19 2003]: Sec. 103. (a) "Person", for purposes of IC 34-14, has the  
20 meaning set forth in IC 34-14-1-13.

21 ~~(b) "Person", for purposes of IC 34-19-2, has the meaning set forth~~  
22 ~~in IC 35-41-1.~~

23 ~~(c)~~ (b) "Person", for purposes of IC 34-24-4, means:

- 24 (1) an individual;
- 25 (2) a governmental entity;
- 26 (3) a corporation;
- 27 (4) a firm;
- 28 (5) a trust;
- 29 (6) a partnership; or
- 30 (7) an incorporated or unincorporated association that exists  
31 under or is authorized by the laws of this state, another state, or a  
32 foreign country.

33 ~~(d)~~ (c) "Person", for purposes of ~~IC 34-26-2~~, *includes individuals at*  
34 *least eighteen (18) years of age and emancipated minors: section 44.8*  
35 *of this chapter, means an adult or a minor.*

36 ~~(e)~~ (d) "Person", for purposes of IC 34-26-4, has the meaning set  
37 forth in IC 35-41-1-22.

38 ~~(f)~~ (e) "Person", for purposes of IC 34-30-5, means any of the  
39 following:

- 40 (1) An individual.
- 41 (2) A corporation.
- 42 (3) A partnership.

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(4) An unincorporated association.

(5) The state (as defined in IC 34-6-2-140).

(6) A political subdivision (as defined in IC 34-6-2-110).

(7) Any other entity recognized by law.

~~(g)~~ (f) "Person", for purposes of IC 34-30-6, means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity that:

(1) has qualifications or experience in:

(A) storing, transporting, or handling a hazardous substance or compressed gas;

(B) fighting fires;

(C) emergency rescue; or

(D) first aid care; or

(2) is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

~~(h)~~ (g) "Person", for purposes of IC 34-30-18, includes:

(1) an individual;

(2) an incorporated or unincorporated organization or association;

(3) the state of Indiana;

(4) a political subdivision (as defined in IC 36-1-2-13);

(5) an agency of the state or a political subdivision; or

(6) a group of such persons acting in concert.

~~(i)~~ (h) "Person", for purposes of sections 42, 43, 69, and 95 of this chapter, means an individual, an incorporated or unincorporated organization or association, or a group of such persons acting in concert.

~~(j)~~ (i) "Person" for purposes of IC 34-30-10.5, means the following:

(1) A political subdivision (as defined in IC 36-1-2-13).

(2) A volunteer fire department (as defined in IC 36-8-12-2).

(3) An employee of an entity described in subdivision (1) or (2) who acts within the scope of the employee's responsibilities.

(4) A volunteer firefighter (as defined in IC 36-8-12-2) who is acting for a volunteer fire department.

(5) *After March 31, 2002, a corporation, a limited liability company, a partnership, an unincorporated association, or any other entity recognized by law.*

**(j) "Person", for the purposes of IC 34-57-5, has the meaning set forth in IC 34-57-5-1.**

SECTION 8. IC 34-6-2-129.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 129.4. "Record", for purposes of IC 34-57-5, has the meaning set forth in IC 34-57-5-1.**



SECTION 9. IC 34-57-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. To be eligible for funds under this chapter, a center must do the following:

- (1) Comply with this chapter and the rules adopted by the chief justice of Indiana.
- (2) Provide neutral mediators who have received training in conflict resolution techniques as specified under rules adopted by the chief justice of Indiana.
- (3) Provide dispute resolution without cost to a participant who is indigent and at nominal or no cost to other participants.
- (4) Provide dispute resolution services to the community for parties who participate on a voluntary basis.
- (5) Ensure that any arbitration services offered by the center are in compliance with ~~IC 34-57-2~~ **IC 34-57-5**.
- (6) At the conclusion of the dispute resolution process do the following, if an agreement is reached:
  - (A) Provide a written agreement or decision setting forth the settlement of the issues and future responsibilities of each participant.
  - (B) If the matter was referred by the court for dispute resolution after a cause was filed, provide a written agreement or decision to the court that made the referral.
  - (C) If the matter was referred by a prosecuting attorney for dispute resolution, provide a written agreement or decision to the prosecuting attorney that made the referral.

SECTION 10. IC 34-57-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. ~~IC 34-57-2~~ **IC 34-57-5** applies to arbitration conducted under this chapter.

SECTION 11. IC 34-57-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. (a) This section applies to a dispute described in section 1(3) of this chapter.

(b) Except as provided under subsection (c), the running of a statute of limitation ceases to run after the time:

- (1) arbitration is initiated under ~~IC 34-57-2-2~~ **IC 34-57-5-9** (or IC 34-4-2-2 or **IC 34-57-2-2** before ~~its~~ **their** repeal); or
- (2) the parties sign an agreement to mediate.

(c) The statute of limitation resumes running after the earlier of the following:

- (1) The date the parties enter into a written agreement under section 4(6) of this chapter (or IC 34-4-2.5-9(6) before its repeal).
- (2) Six (6) months after the date that the statute of limitation was suspended under subsection (b) (or IC 34-4-2.5-20(b) before its

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repeal).

SECTION 12. IC 34-57-5 IS ADDED TO THE INDIANA CODE  
AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2003]:

**Chapter 5. Uniform Arbitration Act**

**Sec. 1. The following definitions apply throughout this chapter:**

(1) "Arbitration organization" means an association, an agency, a board, a commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means a circuit or superior court. The term includes a probate court if the subject of the arbitration concerns a matter over which a probate court has jurisdiction.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a government, a governmental subdivision, an agency, an instrumentality, a public corporation, or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Sec. 2. (a)** Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when:

(1) it comes to the person's attention; or

(2) the notice is delivered:

(A) at the person's place of residence or place of business;  
or

(B) at another location held out by the person as a place of delivery of such communications.

**Sec. 3. (a)** This chapter governs an agreement to arbitrate made after June 30, 2003.

(b) Subject to subsection (c), this chapter governs an agreement

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to arbitrate made before July 1, 2003, if all the parties to the agreement or to the arbitration proceeding so agree in a record.

(c) After June 30, 2003, this chapter governs an agreement to arbitrate whenever made.

Sec. 4. (a) Except as otherwise provided in subsections (b) and (c), a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) waive or agree to vary the effect of the requirements of section 5(a), 6(a), 8, 17(a), 17(b), 26, or 28 of this chapter;

(2) agree to restrict unreasonably the right under section 9 of this chapter to notice of the initiation of an arbitration proceeding;

(3) agree to restrict unreasonably the right under section 12 of this chapter to disclosure of any facts by a neutral arbitrator; or

(4) waive the right under section 16 of this chapter of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or to an arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or section 3(a), 3(c), 7, 14, 18, 20(c), 20(d), 22, 23, 24, 25(a), 25(b), 29, or 30 of this chapter.

Sec. 5. (a) Except as otherwise provided in section 28 of this chapter, an application for judicial relief under this chapter must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

Sec. 6. (a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

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(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding:

(1) challenges the existence of; or

(2) claims that a controversy is not subject to; an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Sec. 7. (a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate under the agreement:

(1) if the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) if the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless the court finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, the court shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement to arbitrate, the court may not, under subsection (a) or (b), order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or because grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in the court where the proceeding is pending. Otherwise, a motion under this section may be made in any court as provided in section 27 of this chapter.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall

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1 stay any judicial proceeding that involves a claim subject to the  
2 arbitration. If a claim subject to the arbitration is severable, the  
3 court may limit the stay to that claim.

4 **Sec. 8. (a)** Before an arbitrator is appointed and is authorized  
5 and able to act, the court, upon motion of a party to an arbitration  
6 proceeding and for good cause shown, may enter an order for  
7 provisional remedies to protect the effectiveness of the arbitration  
8 proceeding to the same extent and under the same conditions as if  
9 the controversy were the subject of a civil action.

10 **(b)** After an arbitrator is appointed and is authorized and able  
11 to act:

12 (1) the arbitrator may issue the same orders the court is  
13 authorized to issue under subsection (a) for provisional  
14 remedies, including interim awards, as the arbitrator finds  
15 necessary to protect the effectiveness of the arbitration  
16 proceeding and to promote the fair and expeditious resolution  
17 of the controversy to the same extent and under the same  
18 conditions as if the controversy were the subject of a civil  
19 action; and

20 (2) a party to an arbitration proceeding may move the court  
21 for a provisional remedy only if the matter is urgent and the  
22 arbitrator is not able to act timely or the arbitrator cannot  
23 provide an adequate remedy.

24 **(c)** A party does not waive a right of arbitration by making a  
25 motion under subsection (a) or (b).

26 **Sec. 9. (a)** A person initiates an arbitration proceeding by giving  
27 notice in a record to the other parties to the agreement to  
28 arbitrate:

29 (1) in the manner agreed between the parties; or

30 (2) in the absence of agreement, by certified or registered  
31 mail, return receipt requested and obtained, or by service as  
32 authorized for the commencement of a civil action.

33 The notice must describe the nature of the controversy and the  
34 remedy sought.

35 **(b)** Unless the person objects for lack or insufficiency of notice  
36 under section 15(c) of this chapter not later than the beginning of  
37 the arbitration hearing, a person by appearing at the hearing  
38 waives any objection to lack of or insufficiency of notice.

39 **Sec. 10. (a)** Except as otherwise provided in subsection (c), upon  
40 motion of a party to an agreement to arbitrate or to an arbitration  
41 proceeding, the court may order consolidation of separate  
42 arbitration proceedings as to all or some of the claims if:

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(1) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one (1) of the persons is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Sec. 11. (a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If:

(1) the parties have not agreed on a method;

(2) the agreed method fails; or

(3) an arbitrator appointed fails or is unable to act and a successor has not been appointed;

the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed under the agreed method.

(b) An individual who has:

(1) a known, direct, and material interest in the outcome of the arbitration proceeding; or

(2) a known, existing, and substantial relationship with a party;

may not serve as an arbitrator if the arbitrator is required by an agreement to be neutral.

Sec. 12. (a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to

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1 affect the impartiality of the individual as arbitrator in the  
2 arbitration proceeding, including:

3 (1) a financial or personal interest in the outcome of the  
4 arbitration proceeding; and

5 (2) an existing or past relationship with:

6 (A) a party to the agreement to arbitrate or to the  
7 arbitration proceeding;

8 (B) counsel or representatives of a party;

9 (C) a witness; or

10 (D) another arbitrator.

11 (b) An arbitrator has a continuing obligation to disclose to all  
12 parties to the agreement to arbitrate and to the arbitration  
13 proceeding and to any other arbitrators any facts that the  
14 arbitrator learns after accepting appointment that a reasonable  
15 person would consider likely to affect the impartiality of the  
16 arbitrator.

17 (c) If an arbitrator discloses a fact required by subsection (a) or  
18 (b) to be disclosed and a party timely objects to the appointment or  
19 continued service of the arbitrator based upon the fact disclosed,  
20 the objection may be a ground under section 23(a)(2) of this  
21 chapter for vacating an award made by the arbitrator.

22 (d) If the arbitrator did not disclose a fact as required under  
23 subsection (a) or (b) upon timely objection by a party, the court  
24 under section 23(a)(2) of this chapter may vacate an award.

25 (e) An arbitrator who is appointed as a neutral arbitrator and  
26 who does not disclose:

27 (1) a known, direct, and material interest in the outcome of  
28 the arbitration proceeding; or

29 (2) a known, existing, and substantial relationship with a  
30 party;

31 is presumed to act with evident partiality under section 23(a)(2) of  
32 this chapter.

33 (f) If the parties to an arbitration proceeding agree to the  
34 procedures of an arbitration organization or any other procedures  
35 for challenges to arbitrators before an award is made, substantial  
36 compliance with the procedures is a condition precedent to a  
37 motion to vacate an award on the grounds of not complying with  
38 section 23(a)(2) of this chapter.

39 Sec. 13. If there is more than one (1) arbitrator, the powers of  
40 an arbitrator must be exercised by a majority of the arbitrators,  
41 but all of the arbitrators shall conduct a hearing ordered under  
42 section 15(c) of this chapter.

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1       **Sec. 14. (a) An arbitrator or an arbitration organization acting**  
 2 **in the capacity of an arbitrator is immune from civil liability to the**  
 3 **same extent as a judge of a court of Indiana acting in a judicial**  
 4 **capacity.**

5       **(b) The immunity provided under this section supplements**  
 6 **immunity provided under other law.**

7       **(c) The failure of an arbitrator to make a disclosure required by**  
 8 **section 12 of this chapter does not result in the loss of immunity**  
 9 **provided under this section.**

10       **(d) In a judicial, administrative, or similar proceeding, an**  
 11 **arbitrator or representative of an arbitration organization is not**  
 12 **competent to testify and may not be required to produce records**  
 13 **as to any statement, conduct, decision, or ruling occurring during**  
 14 **the arbitration proceeding to the same extent as a judge of a court**  
 15 **of Indiana acting in a judicial capacity. This subsection does not**  
 16 **apply:**

17       **(1) to the extent necessary to determine the claim of an**  
 18 **arbitrator, arbitration organization, or representative of the**  
 19 **arbitration organization against a party to the arbitration**  
 20 **proceeding; or**

21       **(2) to a hearing on a motion to vacate an award under section**  
 22 **23(a)(1) or 23(a)(2) of this chapter if the movant establishes**  
 23 **prima facie that a ground for vacating the award exists.**

24       **(e) If a person:**

25       **(1) commences a civil action against an arbitrator, arbitration**  
 26 **organization, or representative of an arbitration organization**  
 27 **arising from the services of the arbitrator, organization, or**  
 28 **representative; or**

29       **(2) seeks to compel an arbitrator or a representative of an**  
 30 **arbitration organization to testify or produce records in**  
 31 **violation of subsection (d);**

32 **and the court decides that the arbitrator, arbitration organization,**  
 33 **or representative of an arbitration organization is immune from**  
 34 **civil liability or that the arbitrator or representative of the**  
 35 **organization is not competent to testify, the court shall award to**  
 36 **the arbitrator, organization, or representative reasonable**  
 37 **attorney's fees and other reasonable expenses of litigation.**

38       **Sec. 15. (a) An arbitrator may conduct an arbitration in such**  
 39 **manner as the arbitrator considers appropriate for a fair and**  
 40 **expeditious disposition of the proceeding. The authority conferred**  
 41 **upon the arbitrator includes the power to hold conferences with**  
 42 **the parties to the arbitration proceeding before the hearing and,**

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among other matters, determine the admissibility, relevance, materiality, and weight of evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) if all interested parties agree; or

(2) upon request of one (1) party to the arbitration proceeding if the party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five (5) days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 11 of this chapter to continue the proceeding and to resolve the controversy.

Sec. 16. A party to an arbitration proceeding may be represented by a lawyer.

Sec. 17. (a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at hearings and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

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(b) In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(d) If an arbitrator permits discovery under subsection (c), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in Indiana.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could issue a protective order if the controversy were the subject of a civil action in Indiana.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in Indiana.

(g) The court may enforce a subpoena or discovery related order for the attendance of a witness within Indiana and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in Indiana and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in Indiana.

Sec. 18. If an arbitrator makes a preaward ruling in favor of a

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1 party to the arbitration proceeding, the party may request the  
 2 arbitrator to incorporate the ruling into an award under section 19  
 3 of this chapter. A prevailing party may make a motion to the court  
 4 for an expedited order to confirm the award under section 22 of  
 5 this chapter, in which case the court shall summarily decide the  
 6 motion. The court shall issue an order to confirm the award unless  
 7 the court vacates, modifies, or corrects the award under section 23  
 8 or 24 of this chapter.

9 Sec. 19. (a) An arbitrator shall make a record of an award. The  
 10 record must be signed or otherwise authenticated by any  
 11 arbitrator who concurs with the award. The arbitrator or the  
 12 arbitration organization shall give notice of the award, including  
 13 a copy of the award, to each party to the arbitration proceeding.

14 (b) An award must be made within the time specified by the  
 15 agreement to arbitrate or, if not specified in the agreement, within  
 16 the time ordered by the court. The court may extend the time, or  
 17 the parties to the arbitration proceeding may agree in a record to  
 18 extend the time. The court or the parties may do so within or after  
 19 the time specified or ordered. A party waives any objection that an  
 20 award was not timely made unless the party gives notice of the  
 21 objection to the arbitrator before receiving notice of the award.

22 Sec. 20. (a) On motion to an arbitrator by a party to an  
 23 arbitration proceeding, the arbitrator may modify or correct an  
 24 award:

25 (1) upon a ground stated in section 24(a)(1) or 24(a)(3) of this  
 26 chapter;

27 (2) because the arbitrator has not made a final and definite  
 28 award upon a claim submitted by the parties to the  
 29 arbitration proceeding; or

30 (3) to clarify the award.

31 (b) A motion under subsection (a) must be made and notice  
 32 given to all parties within twenty (20) days after the movant  
 33 receives notice of the award.

34 (c) A party to the arbitration proceeding must give notice of any  
 35 objection to the motion not more than ten (10) days after receipt of  
 36 the notice.

37 (d) If a motion to the court is pending under section 22, 23, or 24  
 38 of this chapter, the court may submit the claim to the arbitrator to  
 39 consider whether to modify or correct the award:

40 (1) upon a ground stated in section 24(a)(1) or 24(a)(3) of this  
 41 chapter;

42 (2) because the arbitrator has not made a final and definite

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award upon a claim submitted by the parties to the arbitration proceeding; or  
(3) to clarify the award.

(e) An award modified or corrected under this section is subject to sections 19(a), 22, 23, and 24 of this chapter.

Sec. 21. (a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by subsections (a) and (b), an arbitrator may order remedies that the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 22 of this chapter or for vacating an award under section 23 of this chapter.

(d) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a), the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

Sec. 22. After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award, at which time the court shall issue a confirming order unless the award is modified or corrected under section 20 or 24 of this chapter or is vacated under section 23 of this chapter.

Sec. 23. (a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

- (1) the award was procured by corruption, fraud, or other undue means;
- (2) there was:
  - (A) evident partiality by an arbitrator appointed as a neutral arbitrator;

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1 (B) corruption by an arbitrator; or

2 (C) misconduct by an arbitrator, prejudicing the rights of  
3 a party to the arbitration proceeding;

4 (3) an arbitrator refused to postpone the hearing upon  
5 showing of sufficient cause for postponement, refused to  
6 consider evidence material to the controversy, or otherwise  
7 conducted the hearing contrary to section 15 of this chapter  
8 so as to prejudice substantially the rights of a party to the  
9 arbitration proceeding;

10 (4) an arbitrator exceeded the arbitrator's powers;

11 (5) there was no agreement to arbitrate, unless the person  
12 participated in the arbitration proceeding without raising the  
13 objection under section 15(c) of this chapter not later than the  
14 beginning of the arbitration hearing; or

15 (6) the arbitration was conducted without proper notice of the  
16 initiation of an arbitration as required under section 9 of this  
17 chapter so as to prejudice substantially the rights of a party  
18 to the arbitration proceeding.

19 (b) A motion under this section must be filed within ninety (90)  
20 days after the movant receives notice of the award under section 19  
21 of this chapter or not more than ninety (90) days after the movant  
22 receives notice of a modified or corrected award under section 20  
23 of this chapter, unless the movant alleges that the award was  
24 procured by corruption, fraud, or other undue means, in which  
25 case the motion must be made not more than ninety (90) days after  
26 the ground is known or by the exercise of reasonable care would  
27 have been known by the movant.

28 (c) If the court vacates an award on a ground other than that set  
29 forth in subsection (a)(5), the court may order a rehearing. If the  
30 award is vacated on a ground stated in subsection (a)(1) or (a)(2),  
31 the rehearing must be before a new arbitrator. If the award is  
32 vacated on a ground stated in subsection (a)(3), (a)(4), or (a)(6), the  
33 rehearing may be before the arbitrator who made the award or the  
34 arbitrator's successor. The arbitrator must render the decision in  
35 the rehearing within the same time as that provided in section  
36 19(b) of this chapter for an award.

37 (d) If the court denies a motion to vacate an award, the court  
38 shall confirm the award unless a motion to modify or correct the  
39 award is pending.

40 Sec. 24. (a) Upon motion made within ninety (90) days after the  
41 movant receives notice of the award under section 19 of this  
42 chapter or within ninety (90) days after the movant receives notice

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of a modified or corrected award under section 20 of this chapter, the court shall modify or correct the award if:

(1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award under this section may be joined with a motion to vacate the award.

Sec. 25. (a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity with the order. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under section 22, 23, or 24 of this chapter, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

Sec. 26. (a) A court of Indiana having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in Indiana confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

Sec. 27. A motion under section 5 of this chapter must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which the hearing was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in Indiana, in the

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1 court of any county in Indiana. All subsequent motions must be  
 2 made in the court hearing the initial motion unless the court  
 3 otherwise directs.

4 Sec. 28. (a) An appeal may be taken from:

- 5 (1) an order denying a motion to compel arbitration;
- 6 (2) an order granting a motion to stay arbitration;
- 7 (3) an order confirming or denying confirmation of an award;
- 8 (4) an order modifying or correcting an award;
- 9 (5) an order vacating an award without directing a rehearing;
- 10 or
- 11 (6) a final judgment entered under this chapter.

12 (b) An appeal under this section must be taken as from an order  
 13 or a judgment in a civil action.

14 Sec. 29. In applying and construing this uniform act,  
 15 consideration must be given to the need to promote uniformity of  
 16 the law with respect to the uniform act's subject matter among  
 17 states that enact the uniform act.

18 Sec. 30. The provisions of this chapter governing the legal effect,  
 19 validity, or enforceability of electronic records or signatures and  
 20 of contracts formed or performed with the use of such records or  
 21 signatures conform to the requirements of Section 102 of the  
 22 Electronic Signatures in Global and National Commerce Act, P. L.  
 23 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the  
 24 Electronic Signatures in Global and National Commerce Act.

25 SECTION 13. THE FOLLOWING ARE REPEALED [EFFECTIVE  
 26 JULY 1, 2003]: IC 34-57-1; IC 34-57-2.

27 SECTION 14. [EFFECTIVE JULY 1, 2003] (a) IC 34-57-5, as  
 28 added by this act, and the repeal of IC 34-57-1 and IC 34-57-2 by  
 29 this act do not affect:

- 30 (1) an action or proceeding commenced; or
- 31 (2) rights accrued;

32 before July 1, 2003.

33 (b) Subject to IC 34-57-5-3, as added by this act, an arbitration  
 34 agreement made before July 1, 2003, is governed by IC 34-57-1  
 35 (before its repeal) and IC 34-57-2 (before its repeal).

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